UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	Judge
	)	
VON ROLL AMERICA, INC.,	)	Magistrate Judge
	)	
Defendant.	)	
	)	

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed a Complaint simultaneously with this Consent Decree against Defendant Von Roll America, Inc. ("Von Roll") seeking civil penalties and injunctive relief for alleged violations of the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7401 et seq., and the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6901 et seq., at Von Roll's hazardous waste treatment, storage, and disposal facility in East Liverpool, Ohio (the "Facility");

WHEREAS, the Complaint alleges that Von Roll violated and currently is in violation of provisions of the National Emission Standard for Benzene Waste Operations, codified at 40 C.F.R. Part 61, Subpart FF (the "Benzene Waste Operations NESHAP," or "Subpart FF");

WHEREAS, the Complaint also alleges that, in the past, Von Roll violated various RCRA provisions, including provisions setting forth air emission standards for certain tanks, surface impoundments and containers found at 40 C.F.R. Part 265, Subpart CC;

WHEREAS, Von Roll neither admits nor denies the alleged violations nor any factual allegations contained in the Complaint filed simultaneously with this Consent Decree;

WHEREAS, consistent with 40 C.F.R. § 264.1080(b)(7) and § 265.1080(b)(7), Von Roll previously elected to render the provisions of 40 C.F.R. Part 264, Subpart CC, and 40 C.F.R. Part 265, Subpart CC, inapplicable to the Facility's Tanks by certifying that these waste management units are equipped with and operating air emission controls in accordance with the requirements of the Benzene Waste Operations NESHAP;

WHEREAS, in February of 2006, Von Roll agreed to implement an interim compliance program for the carbon adsorption system that forms a part of the Facility's control measures under the Benzene Waste Operations NESHAP;

WHEREAS, the compliance requirements set forth in the Decree with respect to the carbon adsorption system will supersede the interim program;

WHEREAS, the United States and Von Roll (the "Parties") agree that settlement of the matters set forth in the Complaint is in the best interest of the Parties and the public and that entry of this Consent Decree without litigation is the most appropriate means of resolving this matter;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated at arms length and in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, with respect to the matters set forth in the Complaint, and before the taking of any testimony, without adjudication of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a), because Von Roll's Facility is located in this

judicial district and the alleged violations took place here. For purposes of this Decree, or any action to enforce this Decree, Von Roll consents to the Court's jurisdiction and to venue in this judicial district.

2. For purposes of this Consent Decree, Von Roll agrees that the Complaint states claims upon which relief may be granted under the CAA and RCRA.

3. Notice of the commencement of this action has been given to the Ohio Environmental Protection Agency ("Ohio EPA") in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. APPLICABILITY AND BINDING EFFECT

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Von Roll and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Von Roll of its obligation to ensure that the terms of this Decree are implemented unless: (i) the transferee agrees to undertake the obligations required by this Decree and to be substituted for Von Roll as the defendant under the Decree and thus be bound by the terms thereof; and (ii) the United States consents to relieve Von Roll of its obligations. At least 30 days prior to such transfer, Von Roll shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed court order substituting the transferee as the defendant, to U.S. EPA and the United States Department of Justice in

accordance with Section XIV of this Decree (Notices and Submissions) and to the United States Attorney's Office for the Northern District of Ohio, 2 South Main St., Akron, Ohio 44308.

6. Von Roll shall provide a copy of the relevant portions of this Consent Decree to all officers, supervisors, and agents whose responsibilities might reasonably include ensuring compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Von Roll shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. Von Roll shall provide employees whose duties might reasonably include responsibilities associated with the carbon adsorption system described in this Decree with a copy of the Routine Maintenance Procedure attached as Appendix A.

7. In any action to enforce this Consent Decree, Von Roll shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA or RCRA or in regulations promulgated pursuant to or authorized by those statutes shall have the meanings assigned to them in those statutes and regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "CEMS" shall mean continuous emission monitoring system.

b. "Complaint" shall mean the complaint filed by the United States in this action.

c. "Consent Decree" or "Decree" shall mean this decree and all appendices attached hereto.

d. "Date of Entry" shall mean the date this Consent Decree is entered by the Clerk of the Court of the United States District Court for the Northern District of Ohio.

e. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court of the United States District Court for the Northern District of Ohio.

f. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. "Facility" shall mean the hazardous waste treatment, storage, and disposal facility that Von Roll owns and operates at 1250 St. George St., East Liverpool, Ohio.

h. "Facility's Tanks" shall mean the Fixed Roof Tanks and the Waste Pit Tanks.

i. "Fixed Roof Tanks" shall mean the twenty-three hazardous waste storage tanks with fixed roofs that Von Roll currently owns and operates at the Facility and any fixed roof hazardous waste tank that Von Roll may install and operate during the life of this Consent Decree that would be subject to the requirements of either 40 C.F.R. Part 61, Subpart FF; 40 C.F.R. Part 264, Subpart CC; or 40 C.F.R. Part 265, Subpart CC. The twenty-three fixed roof hazardous waste storage tanks currently at the Facility have the following identification numbers: T-1 through T-18 and PT-1 through PT-5. To the extent that, during the life of this Decree, any

of the Fixed Roof Tanks no longer are used as hazardous waste tanks and no longer serve as waste management units for benzene-containing wastes, then any such tank will be excluded from the definition of "Fixed Roof Tanks" on and after the date of the change in service.

j. "Inter-Box CEMS" shall mean each CEMS that Von Roll is required to install and operate pursuant to Paragraph 17 of this Decree between each primary and secondary carbon box in its carbon adsorption system.

k. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and any of its successors departments or agencies;

l. "Outlet CEMS" shall mean the CEMS that Von Roll is required to operate pursuant to Paragraph 32 of this Decree at the stack associated with the Facility's carbon adsorption system.

m. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral.

n. "Parties" shall mean the United States and Von Roll.

o. "Routine Maintenance Procedure" or "Routine Maintenance Procedure for Vapor Recovery Management" shall mean the document developed by Von Roll dated October 27, 2006, and submitted to the United States that describes the procedures for operating and maintaining Von Roll's carbon adsorption system consistent with the requirements of this Consent Decree; the Routine Maintenance Procedure is attached as Appendix A to this Consent Decree.

p. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

q. "THC" shall mean Total Hydrocarbons.

r. "U.S. EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

s. "Waste Pit Tanks" shall mean the two tanks that Von Roll owns and operates within an enclosure for the purpose of storing bulk solid hazardous waste prior to incineration and which have identification numbers 1501 and 1502. To the extent that, during the life of this Decree, both of these two tanks no longer are used as hazardous waste tanks and no longer serve as waste management units for benzene-containing wastes, then there shall be no "Waste Pit Tanks," as defined in this Decree, at the Facility on and after the date of the change in service.

IV. COMPLIANCE REQUIREMENTS

9. To the extent that any action occurs in the future to render the Benzene Waste Operations NESHAP inapplicable to the Facility's Tanks either individually or collectively, those Tanks that no longer are subject to the Benzene Waste Operations NESHAP immediately will be subject to all applicable U.S. EPA and Ohio EPA requirements then in effect, including all applicable requirements of RCRA.

10. Von Roll shall route all vapors from the Facility's Tanks through a closed-vent system and control device designed and operated in accordance with the requirements of 40 C.F.R. § 61.349, or, if and when applicable to the Facility's Fixed Roof Tanks, 40 C.F.R. §§ 265.1085 and 265.1088 or 40 C.F.R. §§ 264.1084 and 264.1087. Nothing in this Consent Decree is intended to prohibit Von Roll from continuing to use its enclosed combustion device and the carbon adsorption system described in this Decree for purposes of complying with 40

C.F.R. § 61.349, or, with respect to the Facility's Fixed Roof Tanks, for purposes of complying with, if and when applicable, 40 C.F.R. §§ 265.1085 and 265.1088 or 40 C.F.R. §§ 264.1084 and 264.1087.

11. Von Roll shall install, operate, and maintain a carbon adsorption system on the closed vent system that recovers vapors from the Facility's Tanks in accordance with the requirements of 40 C.F.R. §§ 61.349 and 61.354, the terms of this Consent Decree, and Von Roll's Routine Maintenance Procedure for Vapor Recovery Management, attached as Appendix A. Alternatively, to the extent that the Benzene Waste Operations NESHAP becomes inapplicable to some or all of the Facility's Fixed Roof Tanks, then, as to any such tank, Von Roll shall operate and maintain its carbon adsorption system in accordance with the requirements of either 40 C.F.R. § 265.1088 or 40 C.F.R. § 264.1087, as applicable, the terms of this Consent Decree, and Von Roll's Routine Maintenance Procedure for Vapor Recovery Management, attached as Appendix A.

12. Von Roll shall comply with all of the requirements of 40 C.F.R. § 61.343(e) with respect to the Facility's Waste Pit Tanks, including but not limited to performing, on no less than an annual basis, the verification procedure for enclosures specified in Section 5.0 of Procedure T of Appendix B of 40 C.F.R. § 52.741.

A. Installing and Operating Carbon Boxes in Series

13. By no later than the Date of Entry of this Consent Decree, Von Roll shall install, operate, and maintain a carbon adsorption system that consists of two or more trains of a primary and a secondary carbon box operated in series. All boxes shall be the same size and have a maximum design flow rate of no less than 10,000 CFM.

14. By no later than 30 days after the Date of Entry of this Consent Decree, Von Roll shall submit to U.S. EPA a report describing with specificity the carbon adsorption system that Von Roll installs in compliance with Paragraph 13, including but not limited to carbon box manufacturer, carbon box size, maximum design flow rate of each carbon box, and type of carbon used.

15. Except for the limited circumstances and time periods specified in Paragraph 16, for the life of this Consent Decree, Von Roll shall operate a sufficient number of trains to ensure that the maximum flow rate through each primary carbon box does not exceed the manufacturer's recommended maximum design air flow rate when the fans and/or blowers that direct the waste vapors from the Facility's process and storage areas into the carbon boxes operate at their maximum rate. Von Roll may elect to operate only one train when the Facility's hazardous waste incinerator is operating and combusting waste vapors or when the air flow to the carbon adsorption system is less than the manufacturer's recommended maximum design air flow rate for a single box. Nothing in this Consent Decree shall require Von Roll to operate the carbon adsorption system if the Facility's waste incinerator is operating and all of the waste vapors from the Facility's process and storage areas are routed to the incinerator.

16. If the Facility's waste incinerator ceases operating when only one carbon adsorption train is in service because the other train(s) is (are) undergoing a carbon change-out procedure, Von Roll, as expeditiously as possible, shall reduce the flow rate to the carbon adsorption system to the point where the flow does not exceed the maximum design flow rate of the train that remains in service.

B. Monitoring for Carbon Breakthrough

17. By no later than 30 days after the Date of Entry of this Consent Decree, Von Roll shall install and operate a Continuous Emission Monitor System for Total Hydrocarbons between each primary and secondary carbon box in each carbon adsorption train ("Inter-Box CEMS").

18. For purposes of this Consent Decree and air permits for the Facility that address the issues contained in this Consent Decree, breakthrough of carbon between each primary and secondary carbon box is deemed to occur whenever Inter-Box CEMS data equal to or greater than 50 ppm THC on a 60-minute rolling average occurs.

19. On a continuous basis, Von Roll shall direct Inter-Box CEMS data to the Facility's control system and shall maintain an alarm that will sound whenever breakthrough between a primary and a secondary carbon box occurs.

20. During periods when Von Roll is permitted, pursuant to Paragraph 15, to operate fewer than all trains in the Facility's carbon adsorption system, Von Roll shall record "no flow" instead of THC concentration data for each Inter-Box CEMS associated with the carbon box that is not in service.

C. Changing Out Carbon Boxes

21. Except as specified in Paragraph 22, whenever breakthrough between a primary and a secondary carbon box occurs, Von Roll immediately shall change out the primary box. For purposes of this Paragraph and Paragraph 22, "immediately" shall be defined as 12 hour and 48 hour time limitations set forth in Paragraphs 5.1.1 and 5.1.2 of the Routine Maintenance Procedure attached as Appendix A. Von Roll shall undertake the change-out procedure in accordance with the provisions of the Routine Maintenance Procedure.

22. If, within 15 days after having completed a change-out of a primary box pursuant to the Routine Maintenance Procedure, Von Roll experiences an Inter-Box CEMS reading equal to or greater than 50 ppm THC on a 60-minute rolling average on the train that has been changed out, Von Roll shall not be required immediately to initiate and complete a new change-out of the primary box pursuant to the Routine Maintenance Procedure. Instead, as expeditiously as possible, Von Roll shall initiate and complete an investigation of the cause(s) of the elevated Inter-Box CEMS reading to determine if the carbon within the primary box actually is spent or otherwise not functional. If Von Roll determines that the carbon within the primary box is spent or otherwise not functional, Von Roll immediately shall initiate and complete a change-out of the primary box pursuant to the Routine Maintenance Procedure. If Von Roll determines that the elevated Inter-Box CEMS reading is not caused by spent or non-functional carbon, Von Roll shall implement corrective actions, if any, to eliminate the cause(s) of the elevated readings. If, within 5 days after the elevated Inter-Box CEMS reading, Von Roll cannot determine the cause of the elevated reading, Von Roll immediately shall initiate and complete a change-out of the primary box pursuant to the Routine Maintenance Procedure.

23. Nothing in this Subsection IV.C. is intended to limit Von Roll's right to replace its primary or secondary boxes on a more frequent basis than specified herein or at any time that Von Roll determines that carbon within any box is not effectively adsorbing volatile organic compounds, including benzene.

24. Von Roll shall maintain on-site a sufficient supply of fresh carbon or a spare carbon box containing fresh carbon to enable it to undertake a change-out procedure without going through the manufacturer of the carbon boxes or the replacement carbon. This requirement

shall apply at all times except for the reasonable period of time that is necessary to secure additional carbon and/or an additional spare carbon box containing fresh carbon after a change-out procedure has occurred.

D. Modifications to Subsections IV.A and IV.C and Appendix A

25. Von Roll may seek U.S. EPA's approval to materially modify Subsections IV.A and IV.C and Appendix A of this Consent Decree if Von Roll seeks to utilize a carbon adsorption system different from the system that Von Roll is using as of the Date of Entry of this Consent Decree or if Von Roll seeks to materially modify the change-out procedure. In any such request, Von Roll shall describe the system it was using as of the Date of Entry of this Consent Decree; the system it proposes to use in the future; the differences between the two systems; the reasons for wanting to change systems; and any other information that would assist U.S. EPA in evaluating Von Roll's request.

26. U.S. EPA will consider any request under Paragraph 25 on the basis of all available and relevant information and in light of the goals of Subsections IV.A and IV.C and Appendix A. The goals of Subsections IV.A and IV.C and Appendix A include but are not limited to: ensuring the operation of a fully-sized secondary carbon adsorption bed following a primary bed; ensuring the operation of a sufficient number of trains to handle the maximum air flow rate for vapors routed to the carbon adsorption system; and minimizing the amount of time that a single train only is available for use. U.S. EPA's approval of any request to materially modify Subsections IV.A, IV.C, and/or Appendix A of this Consent Decree shall not be unreasonably withheld.

27. Within 90 days after receipt of any request submitted pursuant to Paragraph 25, U.S. EPA shall in writing: (i) approve the request; (ii) approve the request upon specified conditions; (iii) approve part of the request and disapprove the remainder; or (iv) disapprove the request. If Von Roll objects to all or any part of a decision by U.S. EPA under this Paragraph, Von Roll shall invoke Section X of this Decree (Dispute Resolution) within 30 days of receipt of U.S. EPA's decision.

28. If U.S. EPA does not provide a written response to Von Roll's request within 90 days of receipt of the request, Von Roll's request shall be deemed approved by U.S. EPA and Von Roll thereafter shall petition the Court for a material modification of this Decree consistent with the request Von Roll made to U.S. EPA.

29. All material modifications to Subsections IV.A and IV.C and the Routine Maintenance Procedure must be given final approval by this Court.

30. Non-material modifications to the Facility's Routine Maintenance Procedure do not require U.S. EPA's approval nor Court approval. By no later than 30 days after making any non-material modification, Von Roll shall submit a revised copy of the Routine Maintenance Procedure to U.S. EPA with a reference to this Paragraph of the Consent Decree. Disputes regarding whether a modification to the Facility's Routine Maintenance Procedure is material or non-material shall be resolved pursuant to Section X of this Decree (Dispute Resolution).

E. Managing Spent Carbon

31. Von Roll shall manage spent carbon from its carbon adsorption system as hazardous waste. Nothing shall prevent Von Roll from incinerating the spent carbon in its

hazardous waste incinerator if such incineration is consistent with all of the requirements of Von Roll's RCRA permits.

F. Operating and Maintaining an Outlet CEMS

32. By no later than the Date of Entry, Von Roll shall operate and maintain a THC CEMS at the stack associated with the carbon adsorption system ("Outlet CEMS"). Von Roll shall use the data generated at the Outlet CEMS for the purpose of evaluating and verifying the effectiveness of the carbon adsorption system described in this Decree.

G. CEMS Requirements

33. Upon installation, Von Roll shall certify, calibrate, maintain, and operate each Inter-Box CEMS in accordance with the provisions of 40 C.F.R. § 60.13 that are applicable to CEMS (excluding those provisions applicable only to Continuous Opacity Monitoring Systems), and Part 60, Appendix B and Appendix F, except that Von Roll shall use the procedures specified in Part 60, Appendix B, Performance Specification 8A ("PS 8A"), Section 6 instead of any other Relative Accuracy Test Audit procedure. In addition, with respect to each Inter-Box CEMS, Von Roll shall comply with PS 8A, except that Von Roll shall:

a. to the extent that Von Roll utilizes two ducts between each primary and each secondary box for pressure control purposes, be permitted to utilize a sample location on only one of the two ducts;

b. keep the sample probe heated to approximately the same temperature as, or slightly higher than, the temperature inside the duct in which it is inserted;

c. establish a span value of 200 ppm propane; and

d. utilize the following three test points for conducting calibration error tests:

i. Zero Level: zero to 0.1 ppm;

ii. Mid-Level: 40 to 60 ppm;

iii. High-Level: 140 to 160 ppm.

34. Von Roll shall calibrate, maintain and operate the Outlet CEMS in accordance with the manufacturer's recommended procedures.

H. Recordkeeping

35. Von Roll shall retain records of CEMS data for no less than three years. Von Roll shall make CEMS data available to U.S. EPA as soon as practicable upon request.

36. For the life of this Consent Decree, Von Roll shall create and retain written records of: (i) each date and time that breakthrough occurs; (ii) the flow rate to the primary box (as determined by either the fan(s) or blower(s) or a flow monitoring device to the primary box) at the time of each breakthrough event and continuing until the change-out procedure commences; (iii) the date, time, and duration of each change-out procedure; and (iv) the results of each investigation undertaken pursuant to the requirements of Paragraph 22.

I. Incorporating Consent Decree Requirements into Federally-Enforceable Permits

37. Von Roll shall not oppose, appeal, or otherwise seek review of Ohio EPA's decision to amend the Facility's existing Permit to Install ("PTI") to incorporate the requirement of an "in series" carbon adsorption system and the definition of carbon breakthrough set forth in this Consent Decree. With respect to these issues, Von Roll shall cooperate fully with Ohio EPA as Ohio EPA makes this amendment. Nothing in this Consent Decree is intended to limit or

restrict whatever rights Von Roll has to oppose, appeal, or otherwise seek review of any other parts of Ohio EPA's decision to amend the Facility's existing PTI. After issuance of the amended PTI, or in conjunction with the amendment process, Von Roll shall take any steps necessary and within its control to ensure that the Facility's Title V permit is amended consistent with the amended PTI.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

38. Von Roll shall implement a Supplemental Environmental Project ("SEP") in the fall of 2007. Von Roll shall sponsor one collection of household hazardous waste at a satellite location no farther than 25 miles from the Facility. The Fall 2007 household hazardous waste collection shall be in addition to the one that Von Roll routinely sponsors in the spring of each year. Von Roll shall collect, process, recycle, and/or dispose of the household hazardous wastes consistent with all applicable legal requirements. The cost of this project shall be no less than $34,000.

39. Von Roll is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree.

40. With regard to the SEP, Von Roll certifies the truth and accuracy of each of the following:

a. that all cost information provided to U.S. EPA in connection with U.S. EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

b. that, as of the date of executing this Decree, Von Roll is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEP is not a project that Von Roll was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Von Roll has not received and will not receive credit for the SEP in any other enforcement action; and

e. that Von Roll will not receive any reimbursement for any portion of the SEP from any other person.

41. SEP Completion Report. Within 30 days after the date on which the household hazardous waste collection is held, Von Roll shall submit a SEP Completion Report to the United States in accordance with Section XIV of this Consent Decree (Notices and Submissions). The SEP Completion Report shall contain the following information:

a. a detailed description of the SEP as implemented;

b. a description of any problems encountered in completing the SEP and the solutions thereto;

c. an itemized list of all costs;

d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

42. U.S. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs, and Von Roll shall provide such information.

43. After receiving the SEP Completion Report, the United States will notify Von Roll whether or not Von Roll has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed or if the amount expended on performance of the SEP is less than the

amount set forth in Paragraph 38, stipulated penalties may be assessed under Section VIII of this Consent Decree.

44. Disputes concerning the satisfactory performance of the SEP may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

45. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 51.

46. Any public statement, oral or written, in print, film, or other media, made by Von Roll making reference to the SEP under this Decree shall include the following language: "This project is being undertaken in connection with the settlement of an enforcement action taken on behalf of the U.S. Environmental Protection Agency."

VI. REPORTING REQUIREMENTS

47. By no later than 30 days after the end of each calendar quarter after the Date of Entry, Von Roll shall submit to U.S. EPA a report that sets forth or attaches the information required to be retained under Paragraph 36 of this Decree. If no events triggering the requirements of Paragraph 36 occurred during the quarter being reported upon, the report will so state.

48. If Von Roll violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Von Roll shall notify the United States of such violation and its likely duration, in writing, within ten working days of the day Von Roll first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully

explained at the time the report is due, Von Roll shall so state in the report. Von Roll shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Von Roll becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Von Roll of its obligation to provide the notice required by Section IX of this Consent Decree (Force Majeure).

49. Whenever any violation of this Consent Decree or any other event affecting Von Roll's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Von Roll shall notify U.S. EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Von Roll first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

50. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices and Submissions).

51. Each report submitted by Von Roll under this Decree shall be signed by an official of Von Roll and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

52. The reporting requirements of this Consent Decree do not relieve Von Roll of any reporting obligations required by the CAA or RCRA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

53. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. CIVIL PENALTY

54. No later than 30 days after the Date of Entry of this Consent Decree, Von Roll shall pay $750,000 as a civil penalty. Payment of the civil penalty will be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, referencing USAO File Number 2006V00096, DOJ Case Number 90-5-2-1-08743, and the civil action case name and case number of this action in the United States District Court for the Northern District of Ohio. The costs of such electronic funds transfer will be the responsibility of Von Roll. Payment will be made in accordance with instructions provided to Von Roll by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Ohio. Any funds received after 11:00 a.m. (Eastern time) will be credited on the next business day. Von Roll shall provide notice of payment, referencing USAO File Number 2006V00096, DOJ Case Number 90-5-2-1-08743, and the civil action case name and case number of this action in the United States District Court for the Northern District of Ohio, to the Department of Justice and the Office of Regional Counsel of Region 5 of U.S. EPA, as provided in Section XIV ("Notices and Submissions").

55. Von Roll shall pay interest on any unpaid balance of the civil penalty owed which will begin to accrue at the end of the 30 day period described above, at the rate established by the Department of the Treasury under 31 U.S.C. § 3717.

56. Upon entry, this Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable federal authority. The United States will be deemed a judgment creditor for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

57. Von Roll shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

VIII. STIPULATED PENALTIES

58. Von Roll shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in this Section VIII, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

59. For failing to perform, on an annual basis, the verification procedure for enclosures as specified in Procedure T of Appendix B of 40 C.F.R. § 52.741: $10,000 per missed procedure.

60. For failing to install or operate a carbon adsorption system that consists of two or more trains of a primary and a secondary carbon box operated in series: $15,000 per day.

61. For failing to install or operate carbon boxes of the same size: $10,000 per day, per box.

62. For operating any carbon box that has a maximum design flow rate of less than 10,000 CFM: $10,000 per day, per box.

63. For failing to operate the Facility's carbon adsorption system consistent with the requirements of Paragraph 15: $10,000 per day, per violation.

64. For failing to comply with the requirement of Paragraph 16:

Period of Non-Compliance	Penalty per Day
1 Day	$ 500
2 Days	$1,500
3 or More Days	$2,500

65. For failing to timely install an Inter-Box CEMS between each primary and secondary carbon box:

Period of Non-Compliance	Penalty per Day per CEMS
1 to 30 Days	$ 500
31 to 60 Days	$1,000
Over 60 Days	$2,000

66. For failing to continuously direct Inter-Box CEMS data to the Facility's control system or for failing to maintain an alarm that sounds whenever breakthrough occurs, except for periods of malfunction or scheduled maintenance:

Period of Non-Compliance	Penalty per Day per Violation
1 to 5 Days	$ 500
5 to 10 Days	$1,000
Over 10 Days	$2,000

67. For failing to comply with either the 12 hour or the 48 hour time limitations set forth in the Routine Maintenance Procedure (Appendix A) at Paragraphs 5.1.1 and 5.1.2, respectively:

Period of Non-Compliance	Penalty per Day per Violation
1 Day	$ 500
2 Days	$1,500
3 or More Days	$2,500

68. For failing to comply with any of the requirements of Paragraph 22:

Period of Non-Compliance	Penalty per Day per Violation
1 to 30 Days	$ 500
31 to 60 Days	$1,000
Over 60 Days	$2,000

69. For failing to comply with the requirement of Paragraph 24:

Period of Non-Compliance	Penalty per Day
1 to 5 Days	$ 500
5 to 10 Days	$1,000
Over 10 Days	$2,000

70. For failing to manage spent carbon as hazardous waste pursuant to the requirements of Paragraph 31: $ 5,000 per violation.

71. For failing to operate or maintain each Inter-Box CEMS or the Outlet CEMS, except for periods of malfunction or scheduled maintenance:

Period of Non-Compliance	Penalty per Day per CEMS
1 to 5 Days	$ 500
5 to 10 Days	$1,000
Over 10 Days	$2,000

72. For failing to certify or calibrate each Inter-Box CEMs consistent with the requirements of Paragraph 33:

Period of Non-Compliance	Penalty per Day per CEMS per Violation
1 to 30 Days	$ 500
31 to 60 Days	$1,000
Over 60 Days	$2,000

73. For failing to calibrate the Outlet CEMS consistent with the requirements of Paragraph 34:

Period of Non-Compliance	Penalty per Day
1 to 30 Days	$ 200
31 to 60 Days	$ 500
Over 60 Days	$1,000

74. For failing to retain the CEMS data required by Paragraph 35 or for failing to create or retain the records required by Paragraph 36:

Period of Non-Compliance	Penalty per Day per Violation
1 to 30 Days	$ 200
31 to 60 Days	$ 500
Over 60 Days	$1,000

75. Except as provided in Paragraph 76, if the SEP is not completed satisfactorily, Von Roll shall pay a stipulated penalty in the amount of $30,000.

76. If the SEP is not completed satisfactorily, but Von Roll: (i) made a good faith and timely effort to complete the project; and (ii) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Von Roll shall not pay any stipulated penalty.

77. If the SEP is completed satisfactorily, but Von Roll spent less than 90 percent of the amount of money required to be spent, Von Roll shall pay a stipulated penalty in the amount of 90% of the amount by which the SEP fell short of $34,000.

78. If the SEP is completed satisfactorily, but Von Roll spent at least 90 percent of the amount required to be spent, Von Roll shall not pay any stipulated penalty.

79. For failing to comply with the reporting requirements of Paragraphs 14, 41, 47, 48, or 49:

Period of Non-Compliance	Penalty per Day per Violation
1 to 30 Days	$ 200
31 to 60 Days	$ 500
Over 60 Days	$1,000

80. For failing to timely pay the civil penalty required under Section VII of this Decree when due, $ 10,000 per day.

81. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Von Roll shall pay any stipulated penalty within 30 days of receiving the United States' written demand.

82. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

83. Stipulated penalties shall continue to accrue as provided in Paragraph 81, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Von Roll shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Von Roll shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Von Roll shall pay all accrued penalties determined by the Court to be owing, together with interest, within 15 days of receiving the final appellate court decision.

84. For stipulated penalties of $10,000 or less, Von Roll shall pay by certified or cashiers check made payable to "U.S. Department of Justice," referencing Von Roll's name and address, USAO File Number 2006V00096, and DOJ Case Number 90-5-2-1-08743. For stipulated penalties of greater than $10,000, Von Roll shall make payment in the same manner set forth in Section VII (Civil Penalty).

85. Von Roll shall not deduct stipulated penalties paid under this Section in calculating its federal income tax.

86. If Von Roll fails to pay stipulated penalties according to the terms of this Consent Decree, Von Roll shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing from the date payment became due through the date payment is made.

87. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Von Roll's violation of this Consent Decree or applicable law. Where a violation of this Consent

Decree is also a violation of the CAA or RCRA, Defendant shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

88. A "force majeure event" is any event beyond the control of Von Roll, its contractors, or any entity controlled by Von Roll that delays the performance of any obligation under this Consent Decree despite Von Roll's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Von Roll's financial inability to perform any obligation under this Consent Decree.

89. Von Roll shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Von Roll first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Von Roll shall also provide written notice, as provided in Section XIV of this Consent Decree (Notices and Submissions), within 7 days of the time Von Roll first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Von Roll's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Von Roll's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Von Roll from asserting any claim of force majeure.

90. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Von Roll to perform the affected requirements for the

time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation.

91. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Von Roll, the United States' position shall be binding, unless Von Roll invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, Von Roll bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Von Roll gave the notice required by Paragraph 89, that the force majeure event caused any delay that Von Roll claims was attributable to that event, and that Von Roll exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

92. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

93. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date of receipt of the written notice, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30

days after the conclusion of the informal negotiation period, Von Roll invokes formal dispute resolution procedures as set forth below.

94. Formal Dispute Resolution. Von Roll shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Von Roll's position and any supporting documentation relied upon by Von Roll.

95. The United States shall serve its Statement of Position within 45 days of receipt of Von Roll's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Von Roll unless Von Roll files a motion for judicial review of the dispute in accordance with the following Paragraph.

96. Von Roll may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Von Roll's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

97. The United States shall respond to Von Roll's motion within 30 days, notwithstanding the Local Rules of this Court. Von Roll may file a Reply Memorandum within 10 days thereafter.

98. In any dispute except one arising under the Force Majeure provisions of this Decree where Paragraph 91 shall apply, Von Roll shall bear the burden of demonstrating that its position complies with and furthers the objectives of this Consent Decree. Each of the Parties reserves its right to take potentially conflicting positions about the appropriate standard of review.

99. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Von Roll under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 83. If Von Roll does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. RIGHT OF ENTRY/INFORMATION COLLECTION

100. The United States and its representatives, contractors, and consultants, shall have the right of entry to the Facility, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Von Roll or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Von Roll's compliance with this Consent Decree.

101. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Von Roll to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

102. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint in this action through the Date of Lodging of this Consent Decree with the District Court. This Consent Decree also resolves the administrative claims of the United States Environmental Protection Agency alleged in the case of In re: Von Roll America, Inc., Docket No. RCRA-05-2005-0009 (U.S. EPA Region 5). A copy of the administrative complaint is attached hereto as Appendix B.

103. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CAA or RCRA or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 102. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public

health or welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

104. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Von Roll is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. Von Roll's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits.

105. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Von Roll shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claims splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

106. Von Roll's entry into this Consent Decree shall not constitute a waiver of any defenses, legal or equitable, that Von Roll may have in any subsequent administrative or judicial proceeding, except a proceeding arising under this Consent Decree.

107. This Consent Decree does not limit or affect the rights of Von Roll or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Von Roll, except as otherwise provided by law.

108. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

XIII. COSTS

109. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Von Roll.

XIV. NOTICES AND SUBMISSIONS

110. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08743

To U.S. EPA:

John Matson
Associate Regional Counsel
U.S. Environmental Protection Agency – Region 5
77 West Jackson Blvd.
Mail Code C-14J
Chicago, IL 60604-3590

and

Charles Hall
U.S. Environmental Protection Agency – Region 5
77 West Jackson Blvd.
Mail Code AE-17J
Chicago, IL 60604-3590

and

Michael Mikulka
U.S. Environmental Protection Agency – Region 5
77 West Jackson Blvd.
Mail Code DE-9J
Chicago, IL 60604-3590

To Von Roll:

John Peterka
Von Roll America, Inc.
1250 St. George St.
East Liverpool, OH 43920

Laurence McHugh
Barnes & Thornburg LLP
100 North Michigan St., Suite 600
South Bend, IN 46601-1632

Michael Scanlon
Barnes & Thornburg LLP
11 South Meridian St.
Indianapolis, IN 46204-3535

111. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

112. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree.

XV. EFFECTIVE DATE

113. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

114. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

115. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation or understanding. Except as specified in Paragraph 30, the terms of this Consent Decree, including the attached Appendix, may be modified only by a subsequent written agreement signed by all of the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Disputes concerning modification of this Decree may be resolved under Section X of this Decree (Dispute Resolution), provided, however, in any motion for judicial review, the applicable standard of review for proposed modifications shall be Fed.R.Civ.P. 60(b).

XVIII. TERMINATION

116. After Von Roll has maintained continuous satisfactory compliance with this Consent Decree for a period of three years after the Effective Date of this Consent Decree, has complied with all other requirements of this Consent Decree, including those relating to the SEP required by Section V of this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Von Roll may serve upon the United

States a Request for Termination, stating that Von Roll has satisfied those requirements, together with all necessary supporting documentation.

117. Following receipt by the United States of Von Roll's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Von Roll has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

118. If the United States does not agree that the Decree may be terminated, Von Roll may invoke Dispute Resolution under Section X of this Decree. However, Von Roll shall not seek Dispute Resolution of any dispute regarding termination until 60 days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

119. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Von Roll agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Von Roll in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

120. Each undersigned representative of Von Roll and the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the

Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

121. This Consent Decree may be signed in counterparts and its validity shall not be challenged on that basis.

122. Von Roll agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

123. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

124. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Von Roll.

SO ORDERED this _____ day of _____, 2007.

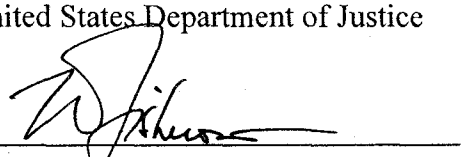
_____

UNITED STATES DISTRICT JUDGE

The undersigned party consents to the Consent Decree in the matter of United States v. Von Roll America, Inc. (N.D. Ohio).

FOR THE UNITED STATES:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice



W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

ANNETTE M. LANG
Trial Attorney
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Phone: 202 514-4213
Fax: 202 616-6584
Email: annette.lang@usdoj.gov

GREGORY A. WHITE
United States Attorney
Northern District of Ohio

By: _____

JAMES L. BICKETT
Assistant U.S. Attorney
Registration #0005598
2 South Main St., Rm. 208
Akron, Ohio 44308
Phone: 330-761-0523
Fax: 330-357-5492
Email: james.bickett@usdoj.gov

The undersigned party consents to the Consent Decree in the matter of United States v. Von Roll America, Inc. (N.D. Ohio).

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

_____

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Ariel Rios Building
Washington, D.C.

The undersigned party consents to the Consent Decree in the matter of United States v. Von Roll America, Inc. (N.D. Ohio).

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

_____

MARY A. GADE
Regional Administrator
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

_____

JOHN MATSON
Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Made Code C-14J
Chicago, IL 60604-3590

The undersigned party consents to the Consent Decree in the matter of United States v. Von Roll America, Inc. (N.D. Ohio).

FOR DEFENDANT VON ROLL AMERICA, INC.:

JOHN A. PETERKA
President
Von Roll America, Inc.
1250 St. George St.
East Liverpool, OH 43920

APPENDIX A

VON ROLL AMERICA INC.	DOCUMENT NUMBER RS-100
TYPE ROUTINE MAINTENANCE PROCEDURE	REVISION 5
TITLE VAPOR RECOVERY MANAGEMENT	EFFECTIVE DATE 10/27/06

PURPOSE

This procedure provides instructions for maintaining the carbon boxes used in the Ventilation Carbon Box Adsoprtion System. In the event that breakthrough has occurred, as determined by the THC monitor located between the primary and secondary boxes in the activated train(s), the secondary box will be moved to the primary position. A box containing fresh carbon will then be placed in the secondary position of the train.

TABLE OF CONTENTS

REVISION SUMMARY

Revision 1 05/17/02; outlines details of change out frequency and sampling.
Revision 2 01/30/03; update sampling procedure.
Revision 3 02/07/06; update details of change out frequency and sampling.
Revision 4 04/27/06; update 3.1 to include 3 boxes in service while online.
Revision 5 10/27/06: update to include carbon box series system.

APPROVED BY

Area Manager _____ Date _____

EH & S Manager _____ Date _____

1.0 REFERENCES

1.1 P&ID's I-01-1-00011 and I-01-1-00012.

2.0 PRECAUTIONS AND LIMITATIONS

2.1 VRA will monitor the inter box CEM data for the in service train(s) on a continuous basis to evaluate breakthrough between the primary and secondary boxes. Breakthrough is indicated by the CEM THC data being equal to or greater than 50 ppm on a 60 minute rolling average. The Balance of Plant (BOP) manager will then coordinate the change out of boxes with the vendor and operations.

2.2 VRA will discontinue the use of the train that experienced breakthrough as indicated by the Inter Box CEMS reading.

3.0 SPECIAL TOOLS AND EQUIPMENT

- Routine Safety Equipment
  - Hard hat
  - Fall protection
  - Steel toe boots
  - Safety glasses
- New carbon box

4.0 INITIAL CONDITIONS

4.1 VRA will operate two carbon box trains in parallel. Each train will consist of two carbon boxes connected in series. The lead box for each train is considered the primary box, the trailing box will be considered the secondary box for their respective trains.

4.2 VRA operates a Continuous Emission Monitoring System (CEMS) for Total Hydocarbons (THC) between the primary and secondary boxes for each train in service (Inter Box CEMS).

4.3 When the incinerator is on-line and not combusting all of the waste vapors from VRA's process and storage areas or when the air flow to the carbon adsorption system is less than the manufacturer's recommended maximum design air flow rate for a single box, one train of carbon boxes will be placed in service to control vent emissions.

4.4 When the incinerator is off-line and the air flow to the carbon adsorption system is not less than the manufacturer's recommended maximum design air flow rate for a single box, two trains of carbon boxes will be placed in service to control vent emissions.

4.5 When breakthrough occurs, VRA will move the secondary box to the primary position. VRA will then install a new secondary box.

4.6 Inter Box THC will be monitored by the control room via the Distributed Control System (DCS). When breakthrough is indicated, an automatic alarm will sound.

5.0 INSTRUCTIONS

5.1 **Single Train Operation (When the incinerator is on line and not combusting all of the waste vapors from VRA's process and storage areas or when the air flow to the carbon adsorption system is less than the manufacturer's recommended maximum design air flow rate for a single box.)**

5.1.1 When a single train is in service and breakthrough occurs, VRA will discontinue the use of that train as soon as possible but not longer than 12 hours after detection of breakthrough. Except for the limited period described in the fourth bullet below, VRA also will ensure that the flow rate vented to each in service train does not exceed the manufacturer's specifications.

- Discontinuing the use of a train will be performed by the control room operator via the DCS. The redundant train will be put into service immediately before the train which experienced breakthrough is taken out of service.
- If the North train is experiencing breakthrough, the control room will OPEN HV-8682A (Carbon Box South Train Inlet Damper) and HV-8682B (Carbon Box South Train Outlet Damper), then CLOSE HV-8681A (Carbon Box North Train Inlet Damper) and HV-8681B (Carbon Box North Train Outlet Damper).
- If the South train is experiencing breakthrough, the control room will OPEN HV-8681A (Carbon Box North Train Inlet Damper) and HV-8681B (Carbon Box North Train Outlet Damper), then CLOSE HV-8682A (Carbon Box South Train Inlet Damper) and HV-8682B (Carbon Box South Train Outlet Damper).
- If the incinerator goes off-line when one train is in service and the second train is unavailable because it experienced breakthough and the carbon change-out has not been completed, the flow rate to the carbon system will be reduced to the point where the flow does not exceed the maximum design flow rate of the in-service train. This will be accomplished by contacting the control room as expeditiously as possible and requesting that control valve PCV-8667B (Carbon system inlet control valve) be adjusted until the flow rate to the in service train is within the manufacturer's specifications.

5.1.2 When breakthrough occurs on a single train, the changeout discussed in this section must be completed within 48 hours after the use of that train has been discontinued. The changeout will be performed such that the secondary box becomes the primary box and a new box is installed as the secondary box. Change out will be performed by BOP personnel.

a. If changing out the primary box of the North train, then CLOSE, LOCK closed, and TAG out:
   - GW-03, Carbon Box North Train Inlet Isolation manual valve
   - GW-04, Carbon Box North Train Outlet Isolation manual valve

   Verify that the Control Room has CLOSED:
   - HV-8681A, Carbon Box North Train Inlet Damper
   - HV-8681B, Carbon Box North Train Outlet Damper

b. If changing out the primary box of the South train, then CLOSE, LOCK closed, and TAG out
   - GW-07, Carbon Box South Train Inlet Isolation manual valve
   - GW-08, Carbon Box South Train Outlet Isolation manual valve

   Verify that the Control Room has CLOSED:
   - HV-8682A, Carbon Box South Train Inlet Damper
   - HV-8682B, Carbon Box South Train Outlet Damper

5.1.3 Changing the carbon box will occur as follows:

a. Disconnect the carbon boxes from the system.
   - Disconnect the 20 inch hoses from the inlet of the primary carbon box.
   - Disconnect the 20 inch hoses connecting the primary box to the secondary box and the duct between the primary box and secondary box.
   - Disconnect the 20 inch hoses from the outlet of the secondary box.
   - Remove the grounding cable from both the primary and secondary boxes.
   - Remove the THC CEM sampling line from Inter Box THC CEMS.
   - Close all latch doors.

b. Remove the spent primary carbon box.
   - Use the straight truck for loading and unloading.

   NOTE: Have a co-worker help you position / spot the straight truck into place for loading the carbon box.
   - Back up to the primary box. Leave about 2 to 3 feet between the trailer and the carbon box. Put the tractor into neutral and set parking brake. Engage wet-line control (UP position).
   - Let out enough cable to hook to carbon box (winch handle OFF).
   - Put gloves on. Hook coupling to carbon box. Verify that the safety latch is down over the coupling.
   - Take the slack out of the cable (winch handle ON).
   - Start winching carbon box towards the trailer as required to have carbon box ride on rollers.
   - When the carbon box contacts the trailer rollers, adjust the height up as required to have carbon box ride on rollers. Continue to winch carbon box.
   - When the carbon box is entirely on the trailer, then start lowering the boom to its original position. Continue to winch until the carbon box reaches the stops on the trailer.
   - Walk around the trailer and inspect to verify that nothing unusual or out-of-ordinary exists.

c. Move the secondary box to the primary position.
   - Using a forklift, push the secondary box to the primary position.

d. Unload the spent primary carbon box.

- Inspect the carbon box unload location as required to verify location is free of items which could be hit or damaged.

Note: Have a co-worker help you position / spot the straight truck into place for unloading the carbon box.

- Position the trailer for unloading. Put tractor into neutral and set the parking brake. Engage wet-line control (UP position).
- Raise boom (hoist handle UP) to about 7 to 8 feet. Start slowly winching carbon box (winch handle OFF) down the boom. As required to keep the box in contact with the rollers, raise the boom (hoist handle UP).
- When the carbon box touches the ground and as required to keep box in contact with the rollers, lower boom (hoist handle DOWN) until all four box legs touch the ground.
- Return boom to original position. Let out enough cable to allow truck to be moved 2 to 3 feet forward.
- Move tractor forward about 2 feet.
- Put gloves on. Unhook coupling from box. Winch cable back to original position.
- Inspect location as required to verify nothing unusual or out-of-ordinary exists.
- Disengage wet-line control.

e. Install a new carbon box.

- Obtain a box with fresh carbon and load on to the straight truck using step 5.1.3.b.
- Unload box into the secondary box position using step 5.1.3.d.
- Using a forklift, if necessary, push the box into the secondary box position.
- Open the hatches located on the top of the box and verify that the amount of carbon added to the box meets the manufacturer's specification.
- Connect the grounding cables to both the primary and secondary boxes.
- Attach the 20 inch hoses to the inlet of the primary box.
- Attach the 20 inch hoses connecting the primary box to the secondary box and the duct between the primary box and secondary box.
- Attach the 20 inch hoses to the outlet of the secondary box.
- Attach the THC CEM sampling line between the boxes for the Inter Box THC CEMS.
- Open the manual isolation valves for the inlet and outlet of the train.
- Inform the control room that the train is ready for service.

5.2 **Double Train Operation (When the incinerator is off-line and the air flow to the carbon adsorption system is not less than the manufacturer's recommended maximum design air flow rate for a single box.)**

5.2.1 When breakthrough occurs when both trains are in service, both trains will remain in service until the flow rate to the carbon system can be reduced to the point where the flow does not exceed the maximum design flow rate for the train that did not experience breakthrough. This can be accomplished by contacting the control room and requesting that control valve PCV-8667B (Carbon system inlet control valve) be adjusted until the flow rate to the train that did not experience breakthrough is within the manufacturer's specifications.

5.2.2 When the flow to the carbon system has been reduced to the specifications in step 5.2.1, discontinue the use of the train in which breakthrough occurred as soon as possible but not longer than 12 hours after the flow has been reduced. The changeout of the train in which breakthrough occurred must be completed within 48 hours after the use of that train has been discontinued.

5.2.3 The train which is determined to have breakthrough will be changed out following the steps listed in 5.1.2 and 5.1.3.

APPENDIX B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**DOCKET NO. RCRA-05-2005 0009**
	)	
Von Roll America, Inc.	)	
1250 St. George Street	)	
East Liverpool. Ohio 43920-3400	)	
	)	
U.S. EPA I.D. #: OHD 980 613 541	)	
	)	
Respondent.	)	

ADMINISTRATIVE COMPLAINT AND COMPLIANCE ORDER

I. COMPLAINT

A. Preliminary Statement and Jurisdiction

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. § 6928(a).[1] This action is also instituted pursuant to Sections 22.1(a)(4), 22.13 and 22.37 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Orders, and the Revocation, Termination or Suspension of Permits," (Consolidated Rules) codified at 40 C.F.R. Part 22.

2. Jurisdiction for this action is conferred upon the United States Environmental Protection Agency (U.S. EPA) by Sections 2002(a)(1), 3006(b), and 3008 of RCRA; 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

3. Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5, Chicago, Illinois.

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[1]RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

4. The Respondent is Von Roll America, Incorporated (Respondent), doing business in Ohio, and located at 1250 St. George Street, East Liverpool, Ohio 43920 (the Facility).

5. U.S. EPA has promulgated RCRA regulations codified at 40 C.F.R. Parts 260 through 279 governing generators and transporters of hazardous waste and facilities that treat, store and dispose of hazardous waste.

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violations of regulations promulgated pursuant to Subtitle C (Sections 3001 - 3019 of RCRA, 42 U.S.C. §§ 6921 - 6939 (e)), or of any state provision authorized pursuant to section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in section 3008 of RCRA, 42 U.S.C. § 6928.

7. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's RCRA program, effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989). U.S. EPA granted Ohio final authorization to administer certain HSWA and additional RCRA requirements effective June 7, 1991, 56 Fed. Reg. 14203 (April 8, 1991) (corrected effective August 19, 1991 (56 Fed. Reg. 28088 (June 19, 1991)); September 25, 1995, 60 Fed. Reg. 38502 (July 27, 1995); and December 23, 1996, 61 Fed. Reg. 54950 (October 23, 1996). The U.S. EPA - authorized Ohio regulations are codified at Ohio Administrative Code (OAC) Chapters 3745-49 through 69. *See also* 40 C.F.R. § 272.1800 *et seq.*

8. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), U.S. EPA must carry out the new requirements promulgated pursuant to the HSWA, Pub. L. 98-616, until such time as the State

is authorized to carry out such program. Under the terms of Section 3006(g), the requirements established by HSWA are effective in all States regardless of their authorization status and are implemented by U.S. EPA until the State is granted final authorization with respect to these requirements.

9. Pursuant to Section 3006(g) of RCRA, U.S. EPA has jurisdiction to implement and enforce those portions of the HSWA requirements for which the State is not authorized.

10. U.S. EPA has not authorized the State of Ohio to implement and enforce the regulations addressing the air emission standards for process vents; or the air emissions standards for tanks, surface impoundments, and containers codified in Subparts AA and CC, respectively, of 40 C.F.R. Parts 264, 40 C.F.R. §§ 264.1030, et. seq., and 40 C.F.R. §§ 264.1080, et. seq., and Subparts AA and CC of 40 C.F.R. Part 265, 40 C.F.R. §§ 265.1030, et. seq., and 40 C.F.R. §§ 265.1080, et. seq.

11. U.S. EPA has provided notice of commencement of this action to the State of Ohio pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

B. Statutory and Regulatory Background

1. Tank Regulations

12. Subpart CC of 40 C.F.R. Part 265, 40 C.F.R. §§ 265.1080 et. seq., establishes air emission standards for owners and operators of facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers.

13. Pursuant to 40 C.F.R. § 265.1080(a), owners and operators of facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers, must comply with the requirements of Subpart CC of 40 C.F.R. Part 265, 40 C.F.R. §§ 265.1080 et. seq., except as provided in 40 C.F.R. § 265.1080(b).

14. 40 C.F.R. § 265.1082 provides that the owner or operator of a facility in existence on December 6, 1996, which is subject to the air emission standards for tanks, surface impoundments, or containers set forth in Subparts I, J, or K of 40 C.F.R. Parts 265, must begin complying with Subpart CC, 40 C.F.R. §§ 265.1080 et. seq., by December 6, 1996.

15. A tank is a stationary device primarily constructed of non-earthen materials (e.g. wood, concrete, steel, plastic) for structural support, that is designed to contain an accumulation of hazardous waste. *See* 40 C.F.R. § 260.10.

16. Pursuant to 40 C.F.R. § 265.1083(b), owners and operators managing hazardous waste in tanks must control air pollutant emissions in accordance with the standards specified for closed-vent systems and control devices in 40 C.F.R. § 265.1088 and the tank standards in 40 C.F.R. § 265.1085.

17. Pursuant to 40 C.F.R. § 265.1085(d), owners and operators controlling emissions from a tank using Level 2 controls shall use one of the following tanks:

a. A fixed roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section.
b. A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section.
c. A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section.
d. A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section.
e. A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

2. Tanks Within an Enclosure Standards

18. 40 C.F.R. § 265.1085(i) requires owners and operators who control air pollutant emissions from tanks by using an enclosure vented through a closed-vent system to an enclosed combustion control device to meet the requirements specified in paragraphs (i)(1) through (i)(4).

19. Pursuant to 40 C.F.R. § 265.1085(i)(1), the tank(s) must *inter alia* be within an enclosure designed and operated in compliance with the standards specified for enclosures in 40 C.F.R. § 52.741, appendix B.

20. Pursuant to 40 C.F.R. § 265.1085(i)(2), the enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards in 40 C.F.R. § 265.1088 for either a vapor incinerator, boiler, or process heater.

21. 40 C.F.R. § 265.1085(i)(4) requires the owner or operator to inspect and monitor the closed vent system as specified in 40 C.F.R. § 265.1088.

3. Fixed Roof Tank Standards

22. 40 C.F.R. § 265.1085(g) requires owners and operators who control air pollutant emissions from a tank by venting the tank to a control device to meet the requirements specified in paragraphs (g)(1) through (g)(3).

23. Pursuant to 40 C.F.R. § 265.1085(g)(1), the tank shall be covered by a fixed roof and vented directly to a control device fulfilling *inter alia* the following requirements:

a. Pursuant to 40 C.F.R. § 265.1085(g)(1)(i), the fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

b. Pursuant to 40 C.F.R. § 265.1085(g)(1)(iv), the tank must be covered by a fixed roof and vented directly through a closed-vent system to a control device which must be operated in compliance with the standards specified for closed-vent systems and control devices in 40 C.F.R. § 265.1088.

24. 40 C.F.R. § 265.1088 (c)(1) specifies that a control device used to control emissions from a closed vent system shall be one of the following devices:

a. A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight,
b. An enclosed combustion device designed and operated in accordance with the requirements of 40 C.F.R. § 265.1033(c); or
c. A flare designed and operated in accordance with the requirements of 40 C.F.R. §265.1033(d).

25. 40 C.F.R. § 265.1088(c)(3)(i) specifies that an owner or operator using a carbon adsorption system to comply with 40 C.F.R. § 265.1088 (c)(1) shall operate and maintain the control device by replacing all activated carbon in the control device with fresh carbon on a regular basis in accordance with the requirements of 40 C.F.R. § 265.1033(g) (for carbon adsorption systems that regenerate the carbon bed directly onsite in the control device), or 40 C.F.R. § 265.1033(h) (for carbon adsorption systems that do not regenerate the carbon bed directly onsite in the control device).

26. 40 C.F.R. § 265.1033(h) requires an owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly on-site in the control device to replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the procedures outlined in 40 C.F.R. § 265.1033(h)(1) or (2).

27. 40 C.F.R. § 265.1033(h)(1) requires an owner or operator to: (1) monitor on a regular schedule the concentration level of organic compounds in the exhaust vent from the carbon adsorption system, and (2) when carbon breakthrough is indicated, immediately replace the existing carbon with fresh carbon.

28. 40 C.F.R. § 265.1033(h)(2) requires an owner or operator to replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of 40 C.F.R. § 265.1035(b)(4)(iii)(G).

4. Exemption from Tank Regulations

29. 40 C.F.R. § 265.1080(b)(7) provides that the requirements of Subpart CC of 40 C.F.R. Part 265, 40 C.F.R. §§ 265.1080 et. seq. do not apply to a hazardous waste management unit that the owner or operator certifies is equipped with and is operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 C.F.R. part 60, part 61, or part 63.

30. 40 C.F.R. § 265.1080(b)(7) further provides that to exempt a tank within an enclosure from the requirements of Subpart CC of 40 C.F.R. Part 265, 40 C.F.R. §§ 265.1080 et. seq., an owner or operator must also be in compliance with the enclosure and control device requirements of 40 C.F.R. § 265.1085(i), unless exempted by 40 C.F.R. § 265.1083(c)(5).

31. Pursuant to 40 C.F.R. § 265.1083(c)(5), tanks within an enclosure are eligible to be exempt from the standards specified at 40 C.F.R. § 265.1085 through 1088, provided all 3 of the following conditions are met:

i. The tank is located within an enclosure vented to a control device designed and operated in accordance with all applicable requirements specified under 40 C.F.R. part 61, Subpart FF, for a facility at which the total annual benzene quantity from the waste is equal to or greater than 10 megagrams per year;
ii. The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996; and
iii. The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified at 40 C.F.R. § 52.741, Appendix B. The owner or operator shall perform the verification procedure for the enclosure annually.

32. To qualify for the exemption from RCRA Subpart CC under 40 C.F.R. § 265.1083(c)(5), an owner or operator must meet the conditions of 40 C.F.R. § 61.343.

5. Hazardous Waste Shipping Requirements

a. General

33. 40 C.F.R. § 264.71(c) requires that whenever a shipment of *hazardous waste* is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262.

34. 40 C.F.R. § 261.3(c)(2)(i) states that a *solid waste* under 40 C.F.R. § 261.2 is a *hazardous waste* if it was generated from the treatment, storage, or disposal of a hazardous waste.

35. 40 C.F.R. § 261.2(a)(1) defines *solid waste* as any *discarded material* that is not excluded by either 40 C.F.R. § 261.4(a), or under a variance under 40 C.F.R. § 260.30 or 40 C.F.R. § 260.31.

36. 40 C.F.R. § 261.2(a)(2) defines *discarded material* as any material that is: (i) abandoned; (ii) recycled; or (iii) considered *inherently waste-like.*

37. Table 1 of 40 C.F.R. § 261.2(d)(3) sets forth the reclaimed materials that are *inherently waste-like materials*, including *inter alia spent materials* that are *reclaimed.*

38. 40 C.F.R. § 261.1(c) provides that for the purposes of 40 C.F.R. § 261.2 and 40 C.F.R. § 261.6, a *spent material* is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

39. 40 C.F.R. § 261.1(c) further provides that for the purposes of 40 C.F.R. § 261.2 and 40 C.F.R. § 261.6, a material is *reclaimed* if it is processed to recover a usable product, or if it is *regenerated.*

40. 40 C.F.R. § 262.10(h) requires an owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility to comply with the generator standards of Part 262.

41. 40 C.F.R. § 262.10(g) specifies that a person who generates a hazardous waste as defined by 40 C.F.R. part 261 is subject to the compliance requirements and penalties prescribed in section 3008 of the Act if he does not comply with the requirements of this part.

b. Manifesting Requirements

42. 40 C.F.R. § 262.11 requires that any person who generates a solid waste must determine if that waste is a hazardous waste using the methods specified therein.

43. 40 C.F.R. § 262.11(a) requires that the generator first determine whether the waste is excluded from regulation under 40 C.F.R. § 261.4.

44. 40 C.F.R. § 262.11(b) states that the generator must then determine whether the waste is listed as hazardous waste under subpart D of 40 C.F.R. part 261.

45. 40 C.F.R. § 262.11(d) requires the generator to check for exclusions under parts 261, 164, 265, 268, and 273 if the waste is determined to be hazardous.

46. 40 C.F.R. § 262.20 requires that a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, according to the instructions included in the appendix to part 262, before transporting the hazardous waste off-site.

C. General Allegations

47. Respondent is a "person" as defined by Ohio Administrative Code (OAC) 3745-50-10 and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and the owner or operator of a "facility" as defined by OAC 3745-50-10 and 40 C.F.R. § 260.10.

48. At all times relevant to this complaint, Respondent treated, stored, or disposed of hazardous wastes at the Facility.

49. At all times relevant to this Complaint, the Respondent included as part of its operations the following tanks which are used for the treatment, storage, or disposal of hazardous waste and are regulated by Subpart CC: (1) at least two tanks within an enclosure (the two solid hazardous waste pits); and (2) at least twenty three fixed roof tanks.

50. At all times relevant to this Complaint, the Respondent included as part of its operations a carbon adsorption system as its means of compliance with the control device requirements of RCRA Subpart CC, and 40 C.F.R. 61 Subpart FF for both the two tanks within an enclosure, and the twenty three fixed roof tanks.

51. Facilities that treat, store, or dispose of hazardous waste must have interim status or obtain a permit pursuant to 40 C.F.R. Part 270 and Sections 3005 and 3006 of RCRA, 42 U.S.C. §§ 6925-6926.

52. OEPA issued Respondent an Ohio Hazardous Waste Facility Installation and Operation Permit for the Facility on or about April 27, 1984, governing Respondent's operations subject to Ohio's RCRA authorized hazardous waste regulations. The permit expired on May 19, 2002, but continued in force pursuant to 40 C.F.R. §270.51, until March 23, 2005, when OEPA issued a new permit to Respondent.

53. Respondent submitted to U.S. EPA a RCRA Permit application for the Facility on or about September 4, 1981, pursuant to Section 3005 of RCRA, 42 U.S.C. §§ 6925-6926, for the storage and treatment of hazardous waste.

54. U.S. EPA issued Respondent a Federal RCRA hazardous waste management permit for the Facility effective on or about January 25, 1985, governing Respondent's operations subject to U.S. EPA's RCRA hazardous waste regulations. The permit is past its expiration date of January 25, 1995, but continues in force pursuant to 40 C.F.R. §270.51.

55. Neither the State nor the Federal permit, however, incorporated Subpart CC of Part 264, 40 C.F.R. §§ 264.1080, et. seq., as the air emission standards for the twenty three fixed roof tanks, or the two tanks located within an enclosure and authorized in Respondent's RCRA permit, which are used at the Facility for the treatment, storage, or disposal of hazardous waste.

56. Under 40 C.F.R. § 264.1080(c), until Respondent receives a final reissued permit for the Facility incorporating the requirements of 40 C.F.R. part 264, subpart CC for tanks into the permit, Respondent is subject to the interim status requirements of 40 C.F.R. part 265, subpart CC, 40 C.F.R. § 265.1080 et. seq.

57. Under 40 C.F.R. § 270.4, Respondent's compliance with its RCRA permit does not shield it from enforcement actions for violations of 40 C.F.R. Part 265, Subparts AA and CC.

58. Respondent became subject to the air emission standards for tanks, surface impoundments, and containers set forth in Subpart CC of 40 C.F.R. Part 265, 40 C.F.R. §§ 265.1080 et. seq. on December 6, 1996.

59. At all times relevant to this complaint, the Respondent must operate its two tanks within an enclosure in compliance with the tank regulations under 40 C.F.R. § 265.1085(i), unless exempted under 40 C.F.R. § 265.1080(b)(7) and 40 C.F.R. § 265.1083(c)(5).

60. To fulfill the first exemption condition under 40 C.F.R. § 265.1083(c)(5), the Respondent must show that the two tanks within an enclosure are operated in accordance with all applicable requirements specified under the Benzene Waste NESHAP, including 40 C.F.R. § 61.343.

61. Prior to February 10, 2003, for each tank in which the waste stream is placed, 40 C.F.R. § 61.343(a)(1) required an owner or operator to install operate, and maintain a fixed roof tank and closed-vent system that routes all organic vapors vented from the tank to a control device.

62. Prior to February 10, 2003, Respondent's two tanks within an enclosure did not constitute a fixed roof tank and closed-vent system that routes all organic vapors vented from the tank to a control device.

63. Thus, prior to February 10, 2003 Respondent's two tanks within an enclosure were not operated in accordance with all applicable requirements specified under 40 C.F.R. § 61.343.

64. Thus, prior to February 10, 2003, the two tanks within an enclosure did not fulfill the first criterion for exemption from the RCRA Subpart CC air emissions standards.

65. Accordingly, prior to February 10, 2003, the Respondent was subject to the RCRA Subpart CC air emissions standards found at 40 C.F.R. § 265.1085 for its two tanks within an enclosure, and in particular the standards for tanks located within an enclosure found at 40 C.F.R. § 265.1085(i).

66. At all times relevant to this complaint, the Respondent must operate the twenty three fixed roof tanks in compliance with the tank regulations under 40 C.F.R. § 265.1085(g), unless exempted under 40 C.F.R. § 265.1080(b)(7).

67. To fulfill the exemption condition under 40 C.F.R. § 265.1080(b)(7), the Respondent must certify that the twenty three fixed roof tanks are equipped with and are operating controls in accordance with all requirements of an applicable Clean Air Act regulation.

68. Beginning on January 31, 2002, Respondent certified that "the equipment necessary to comply with the control standards set forth in 40 C.F.R. 61 Subpart FF have been installed and that the required inspections or tests have been carried out in accordance with this subpart."

69. Prior to January 31, 2002, the twenty three fixed roof tanks were regulated under RCRA Subpart CC and were required to comply with the tank regulations under 40 C.F.R. § 265.1085(g).

D. Procedural History

70. On December 16 - 17, 2003, U.S. EPA and OEPA conducted a hazardous waste inspection of Respondent's facility, pursuant to Ohio hazardous waste rules and Section 3007 of RCRA.

71. A comprehensive performance test (CPT) of Respondent's incinerator was conducted on December 17 - 18, 2003.

72. On August 12, 2004, U.S. EPA issued to Respondent a Notice of Violation based on information collected during the December 16 - 17, 2003 inspection and submitted by Respondent in response to information requests from U.S. EPA.

73. On May 24, 2005, U.S. EPA issued to Respondent a Notice of Violation based on information submitted by Respondent in response to information requests from U.S. EPA.

E. Violations

Count 1
Improper Control Device for Two Tanks Within an Enclosure
Prior to February 10, 2003
40 C.F.R. § 265.1085(i)

74. Counts 1- 73 are realleged and incorporated herein as if set forth in full.

75. Prior to February 10, 2003, the two solid hazardous waste pit tanks were subject to the RCRA air emissions standards for tanks found at 40 C.F.R. § 265.1085, and in particular the standards for tanks located within an enclosure found at 40 C.F.R. § 265.1085(i).

76. At all times relevant to this Complaint, Respondent included as part of its operations a closed vent system to capture emissions from the two tanks within an enclosure (the solid hazardous waste pit tanks).

77. At all times relevant to this Complaint, for the two tanks within an enclosure,

Respondent included as part of its operations an air emissions control device which receives emissions from the closed vent system.

78. This air emissions control device consisted of a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device.

79. Under 40 C.F.R. § 265.1085(d) and 40 C.F.R. § 265.1085(i), a carbon adsorption system cannot be used as an air emissions control device for tanks within an enclosure, and Von Roll should have routed all emissions from the total enclosure to an enclosed combustion device.

80. Because prior to February 10, 2003, Von Roll improperly used a carbon adsorption system as the control device for the two tanks within an enclosure, the facility failed to comply with the requirements of 40 C.F.R. § 265.1085(i) from at least June of 2000, until February 9, 2003.

Count 2
Failure to Properly Operate Control Device for the Twenty Three Fixed Roof Tanks Prior to January 31, 2002, by Failing to Immediately Replace Carbon in the Carbon Adsorption System When Breakthrough was Indicated and by Failing to Change Out Carbon Boxes Per the Design Analysis
40 C.F.R. § 265.1088(c)
40 C.F.R. § 265.1033(h)
40 C.F.R. § 265.1085(g)

81. Counts 1 - 80 are realleged and incorporated herein as if set forth in full.

82. At all times relevant to this Complaint, Respondent included as part of its operations a closed vent system to capture emissions from the twenty three fixed roof tanks at the facility.

83. At all times relevant to this Complaint, for the twenty three fixed roof tanks, Respondent included as part of its operations an air emissions control device which receives emissions from the closed vent system.

84. This air emissions control device consisted of a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device.

85. The carbon adsorption system includes three carbon boxes, two of which are online and a third box that is a spare, readily available in case of carbon breakthrough.

86. The piping arrangement in the carbon adsorption system is designed to route 50% of the flow of the system through one online carbon box, and 50% of the flow through another online carbon box.

87. The carbon adsorption system for the Facility did not materially change between January 1, 1999 and January 31, 2002.

88. The carbon adsorption system installed and operated by Respondent is designed to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight, to fulfill the requirements of 40 C.F.R. § 265.1088 (c)(1)(i).

89. 40 C.F.R. § 265.1088(c)(3)(i) requires Respondent to maintain and operate its carbon adsorption system by replacing all activated carbon in the control device with fresh carbon on a regular basis in accordance with the requirements of 40 C.F.R. § 265.1033(h), because the carbon bed is not regenerated directly on-site in the control device.

90. At all times relevant to this Complaint, to comply with 40 C.F.R. § 265.1033(h) Respondent must either: (1) monitor on a regular schedule the concentration level of organic compounds in the exhaust vent from the carbon adsorption system, and when carbon breakthrough is indicated, immediately replace the existing carbon with fresh carbon; or (2) replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of 40 C.F.R. § 265.1035(b)(4)(iii)(G).

91. At all times relevant to this Complaint, Respondent was using a total hydrocarbon (THC) analyzer within its closed vent system from the twenty three fixed roof tanks to continuously monitor *the organic compounds (VOCs) in the exhaust vent stream, as required by* 40 C.F.R.

§ 265.1033(h)(1). The THC analyzer is in the vent stack which exhausts emissions from the carbon box system to the atmosphere.

92. Respondent's records show that on November 29, 2000, the THC analyzer recorded an average VOC level in the exhaust emissions from the carbon box system of about 27 ppm.

93. The THC reading of about 27 ppm indicated that carbon breakthrough had occurred.

94. When carbon breakthrough is indicated, 40 C.F.R. § 265.1033(h)(1) requires Respondent to immediately replace the existing carbon where breakthrough has occurred.

95. Respondent did not replace the existing carbon until on or about February 18, 2002.

96. Thus, Respondent failed to immediately replace the existing carbon where breakthrough had occurred on November 29, 2000, as required by 40 C.F.R. § 265.1033(h)(1).

97. In Respondent's September 9, 2002, response to U.S. EPA's August 7, 2002, information request, Respondent produced updated documentation establishing the design carbon replacement interval for the carbon adsorption system at the Facility. The documentation was in the form of a letter from Calgon Carbon Corporation (Calgon), the supplier of carbon to the Facility, dated April 15, 2002 (the Calgon letter). *See Exhibit A.*

98. The Calgon letter established that to achieve the 95% removal efficiency of organic vapor, as required by 40 C.F.R. § 265.1088(c)(1)(i), the regular, predetermined replacement frequency for the carbon adsorption system used by the Facility is 12 units per year.

99. From January of 1999 until January 31, 2002, the replacement frequency of the carbon boxes in the carbon adsorption system at Respondent's Facility was:

March 1999	1 carbon unit
April 29, 2000	1 carbon unit
May 28, 2000	1 carbon unit
February 18, 2002	2 carbon units

100. Accordingly, from January 1, 1999, to January 31, 2002, Respondent operated the carbon adsorption system control device for the twenty three fixed roof tanks without replacing the activated carbon with fresh carbon at the regular, predetermined frequency of 12 units per year, in violation of 40 C.F.R. § 265.1033(h)(2).

101. Respondent's failure to immediately replace the existing carbon with fresh carbon when carbon breakthrough was indicated violated 40 C.F.R. § 265.1033(h)(1).

102. Respondent's failure to replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval resulted in a violation of 40 C.F.R. § 265.1033(h)(2).

103. By failing to comply with 40 C.F.R. § 265.1033(h), Respondent failed to operate the carbon adsorption system control device to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95% in violation of 40 C.F.R. § 265.1088(c).

Count 3
Violation of Dioxin RCRA Permit Limits for Incinerator

104. Complainant incorporates paragraphs 1 through 103 of this Complaint as though fully set forth herein.

105. The effective federal RCRA Permit at Section I.C. contains permit conditions applicable to the hazardous waste incinerator at Respondent's facility.

106. Such conditions include Section C.4 Performance Standards, Section C.19 Periodic Incinerator Testing, and Attachment XII, Permit Conditions Specific to the Enhanced Carbon Injection System (ECIS).

107. On December 23, 2002, U.S. EPA received from Respondent, a RCRA Permit modification request dated December 18, 2002, requesting a reduction in the amount of activated

carbon that respondent is required to feed into the incinerator ductwork via its enhanced carbon injection system.

108. On July 30, 2003, U.S. EPA conditionally approved Respondent's request, but only for an initial period of 12 months to allow for additional verification testing, specifically, three additional confirmatory tests during the first year of operation under the permit modification.

109. The July 30, 2003, letter from U.S. EPA to Respondent contained an Enclosure which specified "Conditions Which Apply During the Term of the Permit Modification."

110. The Conditions specified in the Enclosure superceded the Conditions specified in Conditions B.4 through B.7 of Attachment XII of the Federal RCRA permit.

111. Revised Permit Condition B6 states:

> 6. The Permittee shall not allow the incineration system to exceed an average PCDD/PCDF stack emission concentration of 0.2 nanograms per dry standard cubic meter (ng/dscm), TEQ basis, corrected to 7% oxygen, averaged over all runs of a test condition *of one performance test event.* Unless otherwise directed by U.S. EPA, this permit modification will automatically terminate if such average concentration of PCDD/PCDF exceeds 0.2 ng/dscm TEQ, corrected to 7%. Thereafter, no later than 120 days after the conclusion of all such runs of a test condition, Permittee will be required to feed activated carbon into the incinerator ductwork via the ECIS and into neutralization tank N1 under the terms and conditions in effect immediately prior to the approval of this permit modification. (emphasis added).

112. From September 8 through 11, 2003, Respondent conducted a CPT/Trial Burn at its Facility pursuant to an approved test plan dated June 25, 2003.

113. On November 4, 2003, Respondent submitted a letter to U.S. EPA, documenting the results of the CPT/Trial Burn conducted September 8 through September 11, 2003.

114. The test results documented compliance with emission standards during Condition 1 of the test, but test results for Condition 2 of the test did not show compliance with the emission standards.

115. The PCDD/PCDF stack emission concentration for Run 1 of Test Condition 2 was 1.02 ng/dscm, TEQ, corrected to 7% oxygen.

116. Run 1 of Test Condition 2 was conducted on September 10, 2003.

117. The PCDD/PCDF stack emission concentration for Run 2 of Test Condition 2 was 1.30 ng/dscm, TEQ, corrected to 7% oxygen.

118. Run 2 of Test Condition 2 was conducted on September 10, 2003.

119. The PCDD/PCDF stack emission concentration for Run 3 of Test Condition 2 was 1.07 ng/dscm, TEQ, corrected to 7% oxygen.

120. Run 3 of Test Condition 2 was conducted on September 11, 2003.

121. Therefore, Respondent allowed the incineration system to exceed an average PCDD/PCDF stack emission concentration of 0.2 nanograms per dry standard cubic meter (ng/dscm), TEQ basis, corrected to 7% oxygen, averaged over all runs of Test Condition 2 of one performance test event.

122. Respondent's exceedance of an average PCDD/PCDF stack emission concentration of 0.2 nanograms per dry standard cubic meter (ng/dscm), TEQ basis, corrected to 7% oxygen, averaged over all runs of Test Condition 2 of one performance test event, constituted a violation of revised Permit Condition B.6 of Attachment XII of Respondent's effective RCRA permit for September 10 and 11, 2003.

Count 4
Shipment of Hazardous Wastes Off-Site Without a Manifest
RCRA Permit Attachment I, Condition B.18

123. Complainant incorporates paragraphs 1 through 122of this Complaint as though fully set forth herein.

124. Von Roll's federal RCRA Permit that was in effect at all times relevant to this

Complaint, at Attachment I, Condition B.18, specifies that Von Roll shall comply with the manifest requirements of 40 C.F.R. §§ 264.71, 264.72 and 264.76.

125. 40 C.F.R. § 264.71(c) requires that whenever Von Roll initiates a shipment of hazardous waste from its facility, Von Roll must comply with the requirements of part 262.

126. As part of its hazardous waste management operations, Von Roll generates spent carbon from the carbon boxes from the carbon adsorption system which is used for air pollution control at its facility.

127. The spent carbon generated by Respondent is derived from the treatment, storage, or disposal of hazardous wastes.

128. Thus, the spent carbon generated by Respondent is a hazardous waste.

129. When Von Roll initiates a shipment of the spent carbon from its facility, Von Roll must comply with the requirements of part 262, including the required use of a uniform hazardous waste manifest for shipping hazardous waste under 40 C.F.R. § 262.20.

130. In December 2003, Respondent changed out the carbon from four roll-off boxes at its facility.

131. The spent carbon from the carbon box change outs was shipped to Calgon's Neville Island Plant, a facility which is permitted to handle the waste shipped to it.

132. The spent carbon was shipped to Calgon via Alternate Straight Bills of Lading. One shipment contained 20 super sacks and weighed 22,000 pounds. Another shipment contained 28 super sacks and weighed 38,380 pounds.

133. An Alternate Straight Bill of Lading is not a uniform hazardous waste manifest under Manifest OMB control number 2050-0039 on EPA form 8700-22.

134. By failing to ship the spent carbon to Calgon using a uniform hazardous waste manifest

under Manifest OMB control number 2050-0039 on EPA form 8700-22., Respondent violated its effective federal RCRA permit.

II. PROPOSED CIVIL PENALTY

The Administrator of the U.S. EPA may assess a civil penalty of up to $25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, required U.S. EPA to adjust its penalties for inflation on a periodic basis. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, published at 40 C.F.R. Part 19, U.S. EPA may assess a civil penalty of up to $27,500 per day for each violation of Subtitle C of RCRA occurring or continuing on or after January 31, 1997.

Complainant determined the proposed civil penalty according to RCRA Section 3008, 42 U.S.C. § 6928. In assessing a civil penalty, the Administrator of U.S. EPA must consider "the seriousness of the violation and any good faith efforts to comply with applicable requirements." Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3). Complainant has considered the facts and circumstances of this case with specific reference to the criteria of RCRA Section 3008(a)(3), and to U.S. EPA's 2003 RCRA Civil Penalty Policy. A copy of the penalty policy is enclosed. This policy provides a consistent method of applying the statutory penalty factors to this case. The Complainant proposes, subject to the receipt and evaluation of further relevant information from Respondent, that the Administrator assess a civil penalty of **$643,908** for the RCRA violations alleged in this Complaint, as further explained in Attachment 1, "Penalty Summary Sheet."

Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Respondent may pay this penalty by certified or cashier's check, payable to "Treasurer, the

United States of America," and remit to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check shall be sent to:

John Matson, Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Michael Mikulka, Senior Environmental Engineer
Waste, Pesticides and Toxics Division (DE-9J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check.

III. COMPLIANCE ORDER

Based on the foregoing, Respondent is hereby ordered, pursuant to authority in 3008(a) of RCRA, 42 U.S.C. § 6928(a), and § 22.37(b) of the Consolidated Rules, to comply with the following requirements immediately upon the effective date of the Order:

1. Respondent shall comply with all applicable requirements of its RCRA Permit and 40 C.F.R. § 265 Subpart CC.

2. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order within 15 calendar days after the date it achieves compliance.

3. Respondent shall submit all reports, submissions, and notifications required by this Order to the United Stated Environmental Protection Agency, Region 5, Waste, Pesticides and Toxics Division, Enforcement and Compliance Assurance Branch, Attention: Michael Mikulka (DE-

9J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Copies of any submission under the Order shall also be submitted to the Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, Attention: Mr. Harry Sarvis.

IV. RULES GOVERNING THIS PROCEEDING

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules) at 40 C.F.R. Part 22 (2004) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

V. FILING AND SERVICE OF DOCUMENTS

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Associate Regional Counsel, John Matson to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Matson at (312) 886-2243, and his address is:

John Matson (C-14J)
Assosicate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

VI. OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any material fact in this Complaint, or to contest the amount of the proposed penalty, or both, as provided in Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Permits" codified at 40 C.F.R. Part 22. (A copy of these rules accompanies this Complaint), and as a person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). To request a hearing, Respondent must specifically make the request in a written Answer to this Complaint. Respondent must file its written Answer with the Regional Hearing Clerk within 30 days of the date this Complaint is filed with the Regional Hearing Clerk. Consolidated Rules at § 22.15(a). In counting the 30-day time period, the actual date of receipt is not included. Saturdays, Sundays, and federal legal holidays are included in the computation. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period is extended to include the next day which is not a Saturday, Sunday or federal legal holiday. Consolidated Rules at § 22.7(a).

The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state:

1. The circumstances or arguments alleged to constitute the grounds of defense;
2. the facts Respondent intends to place at issue; and
3. whether Respondent requests a hearing.

Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material fact in the Complaint constitutes an admission of that allegation. Consolidated Rules at § 22.15.

Respondent must file its Answer with the Regional Hearing Clerk (R-19J),

U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the Answer and any subsequent documents filed in this action should be sent to John Matson, Associate Regional Counsel, Office of Regional Counsel (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

If Respondent fails to file a timely written Answer to the Complaint, with or without a request for a hearing, the Regional Administrator or Presiding Officer may issue a Default Order pursuant to § 22.17 of the Consolidated Rules. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on the factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. Default will also result in the penalty proposed in the Complaint becoming due and payable by Respondent without further proceedings 30 days after issuance of a final order upon default under § 22.27(c) of the Cosolidated Rules. In addition, default will preclude Respondent from obtaining adjudicative review of any of the provisions contained in the Compliance Order section of the Complaint.

A hearing upon the issues raised in the Complaint and Answer shall be held (upon the request of Respondent in the Answer) and conducted according to the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*. The hearing will be in a location determined pursuant to § 22.21(d) of the Consolidated Rules.

VII. SETTLEMENT CONFERENCE

Whether or not you as Respondent request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, Respondent should write to John Matson, Associate Regional Counsel, Office of Regional Counsel, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (C-14J), Chicago, Illinois 60604-3590, or telephone him at (312) 886-2243.

Your request for an informal settlement conference does not extend the 30-day period during which you must submit a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure.

U.S. EPA encourages all parties for whom a civil penalty is proposed to pursue the possibilities of settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold a conference. The parties will embody any settlement that they may reach as a result of the conference in a written Consent Agreement and Final Order (CAFO) issued by the Director of the Waste, Pesticides and Toxics and Air and Radiation Divisions, U.S. EPA, Region 5. The issuance of a CAFO shall constitute a waiver of Respondent's right to request a hearing on any stipulated matter in the CAFO.

VIII. PENALTY PAYMENT

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to John Matson and to:

Michael Mikulka, Senior Environmental Engineer
Waste, Pesticides and Toxics Division (DE-9J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

IX. CONTINUING OBLIGATION TO COMPLY

Neither the assessment, nor the payment of a civil penalty will affect Respondent's continuing obligation to comply with RCRA, and any other applicable federal, state, or local law.

Dated this 23rd Day of June 2005

Joseph M. Boyle, Chief
Enforcement and Compliance Assurance Branch
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

RCRA-05- 2005 0009

Exhibit ... o Comp... ...t –
Letter from Calgon dated April 15, 2002

CALGON CARBON CORPORATION P.O. BOX 717 PITTSBURGH, PA 15230-0717 (412) 787-6700

April 15, 2002

Mr. David Cuppett
Von Roll
P.O. Box 919
East Liverpool, OH 43920

Subject: Vapor Pac 10 Service
WTI/Von Roll Facility, East Liverpool, Ohio

Dear David:

This letter will update the summary provided by Calgon Carbon Corporation in a letter to Mr. Nick Gismondi, dated March 17, 1992, concerning the use of the Vapor Pac 10 adsorbers at the Von Roll facility in East Liverpool, Ohio.

In April 1990, the Process Engineering Group at Calgon Carbon Corporation reviewed a specification package issued by Rust Engineering. The specification described an adsorption system to control vent emissions from storage tanks on an intermittent basis. The original design called for an in-situ regenerable activated carbon system. However, subsequent discussion on the difficulty in monitoring the system performance, the utility requirements, and the uncertainty of the operating conditions contributed to a low confidence in the projected operating costs. As a result, Calgon Carbon Corporation recommended the use of a single cycle adsorption system with off-site regeneration of spent carbon to be the most viable alternative. Three Vapor Pac 10 units operated in parallel appeared to offer the best process design values given WTI's process needs. Two units would operate at one time, with the third on standby. A key consideration in operating the Vapor Pac 10s was maintaining the air velocity below 100 FPM, since the Vapor Pac 10 design represents sufficient contact time to allow for 95% removal of adsorbable contaminants under that condition.

The inability to predict the vent source contaminants impacted the operating cost projections of the Vapor Pac 10. Calgon Carbon Corporation used the typical organics loading rate supplied by WTI and made a capacity assumption based on the adsorbable contaminants listed on the facility operating permit. In the worst case the capacity should be 10% by weight. By using the typical organic loading rate per hour the amount of carbon required on an annual basis was estimated to be 218,000 pounds. This value was based on a total operating year of 365 days with a total down time of approximately 550 hours. If these values were not achieved in practice, the 95% removal objective could be maintained by changing GAC more frequently.

Since this time, WTI has made some changes in the facility operation. The vapor recovery system works in conjunction with the kiln operation to control all captured gases from the vapor recovery system. The system normally has a total gas flow ranging between 15,000 and 20,000 CFM, of which approximately 15% of the total flow is sent to the two vapor boxes in parallel, while the remaining 85% of the total flow is routed to the kiln. In situations where the kiln is not operating, the third vapor box is brought online and the total flow is distributed evenly between the three boxes. As discussed above, the Vapor Pac 10s required an air velocity of 100 FPM or less to maximize adsorption. At a maximum of 20,000 CFM flowing into the three boxes, the air velocity would be 89 FPM per box thus meeting the required conditions of operation

Additionally, WTI now handles the disposal of aerosol canisters. The canisters typically contain residual LP gas as the propellant. While activated carbon will adsorb initially high concentrations of organics

ECF: Carbon Boxes

gases, such as propane and butane (common LP gas components), the capacity for these components is much lower than for materials that are typically liquids at ambient conditions. In addition, gases adsorbed on activated carbon will readily desorb once clean air is introduced to the system, or air free from these gases. In other words, once air containing the typical contaminants that are liquid at ambient conditions passes through the bed, the propane and butane will desorb into the clean air, resulting in an apparent performance problem. Another way to look at this is the removal efficiency will appear to decrease because the adsorbed gases desorb into the air stream. Therefore, if activated carbon is relied upon to control these gases, the technology will not achieve 95% removal efficiency.

In addition to the desorption phenomenon that can occur, the use of a THC analyzer to monitor the Vapor Pac 10 effluent can produce misleading results. This is because activated carbon will adsorb the high concentrations of organics, including organic gases. However, low levels of gaseous species that desorb or bleed through the activated carbon will be detected. Thus, as the inlet concentration decreases, the system performance will appear to degrade because the outlet becomes a higher percentage of the inlet at low inlet concentrations. It is not recommended that a THC analyzer be utilized to determine removal efficiencies because of this phenomenon.

If the aerosol process stream is diverted from the activated carbon system, the remainder of the process stream can be controlled at 95% removal efficiency. Based upon current operating conditions (an average of 31 PPM hydrocarbons and 3,000 CFM), we anticipate the change out frequency to be 12 units per year. This is based upon normal operating conditions of 3,000 CFM split between two Vapor Pac 10s (approximately 15% of the total vapor recovery flow). This would be a velocity of about 10 ft/min through both units. However, carbon box life can be controlled further through the use of routine sampling of the carbon to determine the percentage of adsorption capacity remaining in the carbon. It is recommended that the following sampling and analysis (see attached methods) be performed on a weekly basis to verify the carbons remaining adsorption capacity. Based on routine analytical results, the change-out frequency of the boxes can be monitored and managed based on the current conditions of operation.

If you have any questions, please do not hesitate to contact your Technical Sales Representative, Ward Rogers (412-859-0811), or I.

Sincerely,
CALGON CARBON CORPORATION

Steven L. Butterworth
Principal Applications Engineer
412-787-6684
fax: 412-787-6682

CALGON CARBON CORPORATION P.O. BOX 717 PITTSBURGH, PA 15230-0717 (412) 787-6700

TO: Dave Cuppett DATE: 4/18/02

FROM: Steve Butterworth

SUBJECT: ANALYTICAL PROCEDURE AND MODELING DATA

This note is to explain the data work up for the Apparent Density test procedure I faxed you and to provide a copy of the modeling data used to project the carbon consumption in my letter dated 4/15/02.

Apparent Density Data

We use the change in Apparent Density (AD) as a means to estimate the adsorbate loading on an activated carbon. The test procedure describes the methodology. The data is used as follows:

$$AD = AD\left(1 - \text{Moisture Content in Decimal Form}\right)$$

$$\frac{\text{Carbon Sample AD} - \text{Virgin Carbon AD}}{\text{Virgin Carbon AD}} * 100 = \text{Weight Percent Loading}$$

AD = 0.615
MC = 8.8

$$AD = 0.615(1 - 0.088)$$

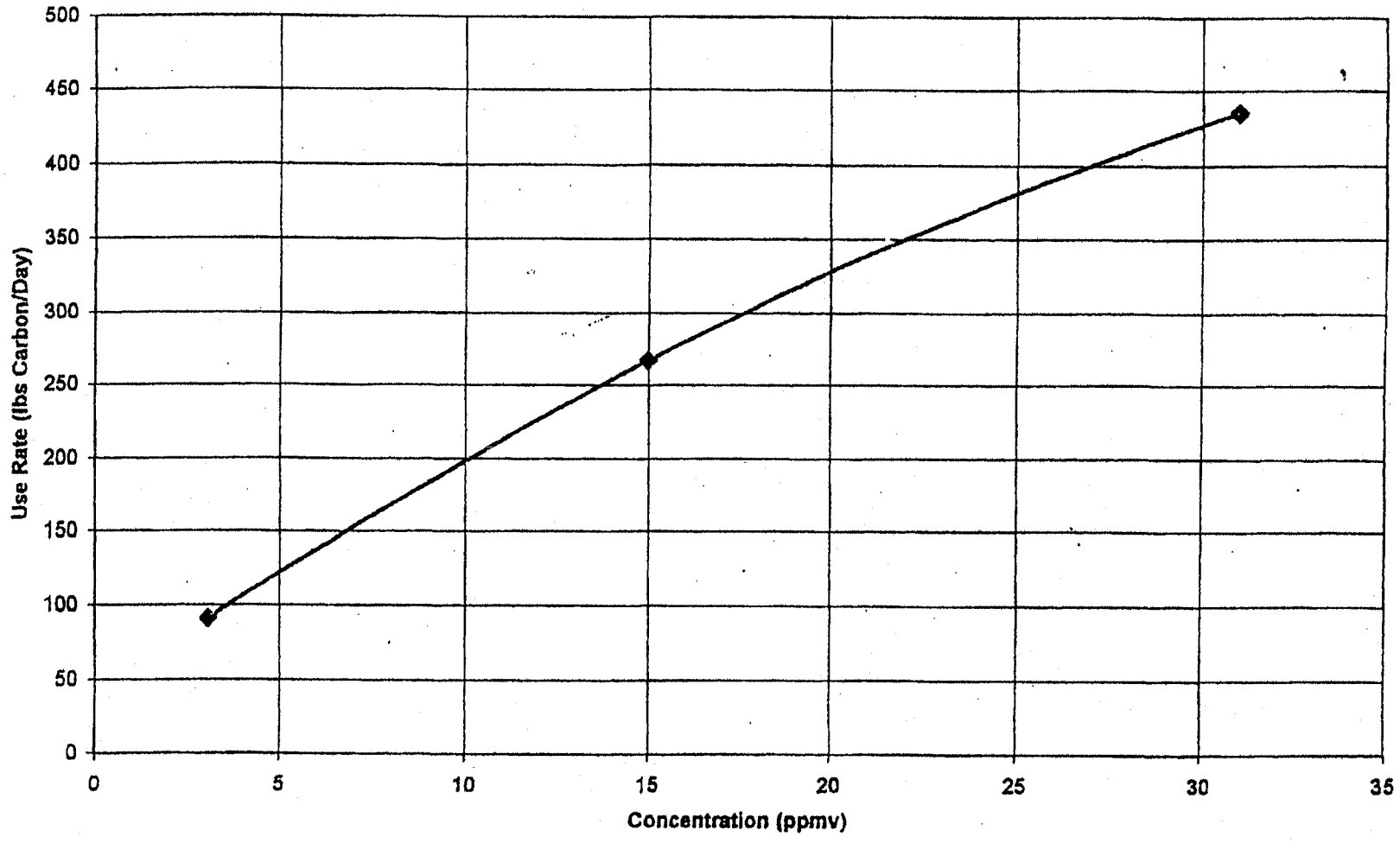
We estimated that a 10% loading is expected in the application.

For performance tracking purposes, you may want to take samples on the influent portion of the baffled bed and the effluent portion of the bed to follow the loading progression.

Modeling Data

The attached data was generated from information you supplied earlier. Low molecular weight species were used for a worst case estimate. In addition, it was assumed that the contaminant loading was continuous, rather than intermittent. When you review the data sheets, the carbon use rate reported next to a component is the use rate to remove that component plus all the other components below it. The components are listed in the order they will break through the units. If you have any questions, please call.

S.L. Butterworth
412-787-6762
fax: 412-787-6676


Carbon Use Estimate Based on Total Inlet Concentration
Flow Rate 3,000 cfm
Use Rate (lbs Carbon/Day)
500
450
400
350
300
250
200
150
100
50
0
0
5
10
15
20
25
30
35
Concentration (ppmv)

Calgon Carbon C oration porAds Report

Temperature (C): 25.0 Flow Rate (actual ft3/min): 3000

Pressure (atm): 1.0

ate (Listed In Order of Elution)	Concentration (ppmv)	CCC AP-460	Adsorbent Use Rate (lbs/day)			
Acetone	2.5	267.40				
Ethanol	0.5	134.76				
Isopropyl Alcohol	0.05	102.28				
Chloroform	3	100.79				
Methyl Ethyl Ketone	3	96.59				
Pyridine	3	38.54				
1-Butanol	0.25	30.27				
Toluene	3	16.78				
Totals:	1.53E1					

Note: This information has been generated using Calgon Carbon's proprietary predictive model. No safety factors have been incorporated into these results. Appropriate safety factors should be applied as necessary. There is no expressed or implied warranty regarding the suitability or applicability of results.

Calgon Carbon Corporation VaporAds Report

Temperature (C): 25.0 Flow Rate (actual ft3/min): 3000
Pressure (atm): 1.0

[redacted]ite (Listed In Order of Elution)	Concentration (ppmv)	Adsorbent Use Rate (lbs/day) CCC AP-460				
Acetone	0.5	91.47				
Ethanol	0.1	40.17				
Isopropyl Alcohol	0.05	28.20				
Methyl Ethyl Ketone	0.6	27.18				
Chloroform	0.6	26.53				
Pyridine	0.6	9.56				
1-Butanol	0.05	7.80				
Toluene	0.6	3.90				
Totals:	3.10E0					

Note: This information has been generated using Calgon Carbon's proprietary predictive model. No safety factors have been incorporated into these results. Appropriate safety factors should be applied as necessary. There is no expressed or implied warranty regarding the suitability or applicability of results.

Calgon Carbon C oration porAds Report

Temperature (C): 25.0 Flow Rate (actual ft3/min): 3000

Pressure (atm): 1.0

rbate (Listed In Order of Elution)	Concentration (ppmv)	Adsorbent Use Rate (lbs/day) CCC AP-460				
Acetone	5	434.87				
Ethanol	1	235.58				
Isopropyl Alcohol	0.5	185.75				
Chloroform	6	181.46				
Methyl Ethyl Ketone	6	170.93				
Pyridine	6	70.62				
1-Butanol	0.5	54.72				
Toluene	6	31.59				
Totals:	3.10E1					

Note: This information has been generated using Calgon Carbon's proprietary predictive model. No safety factors have been incorporated into these results. Appropriate safety factors should be applied as necessary. There is no expressed or implied warranty regarding the suitability or applicability of results.

ATTACHMENT 1
PENALTY SUMMARY SHEET
VON ROLL AMERICA, INC., EAST LIVERPOOL, OHIO
OHD 980 613 541

NATURE OF VIOLATIONS	CITATION OF REGULATION OR LAW	HARM/ DEVIATION	GRAVITY-BASED PENALTY	MULTI-DAY/ MULTIPLE PENALTY	POLICY ADJUSTMENTS	ECONOMIC BENEFIT	INFLATION ADJUST-MENTS	TOTAL PENALTY
COUNT 1: Use of a Control Device for the Hazardous Waste Pits which is not Authorized by 40 CFR § 265.1085(i).	40 CFR § 265.1085(i)	Minor/ Moderate	$1,375	$49,225	$0	$0	$0	$50,600
COUNT 2: Failure to properly operate control device for hazardous waste tanks by failing to immediately replace carbon when breakthrough was indicated	40 CFR § 265.1088(c)(3)(i) 40 CFR § 265.1088(c)(1) 40 CFR§265.1033(h)	Moderate/ Moderate	$7,975	$250,600	$25,858	$280,000	$0	$564,433
COUNT 3: Violation of Dioxin Incinerator Limits of RCRA Permit	RCRA Permit at Section I.C.	Major/ Major	$26,125	$0	$0	$0	$0	$26,125
COUNT 4: Shipment of Hazardous Waste without a Manifest	RCRA Permit at Attachment I, Condition B.18	Minor/ Moderate	$1,375	$1,375	$0	$0	$0	$2,750
TOTALS:			$36,850	$301,200	$25,858	$280,000	$0	$643,908

NOTE: The gravity based penalty amount is determined using the penalty assessment matrix found at pages 2 and 18 of the Revisions to the 1990 RCRA Civil Penalty Policy, issued on June 23, 2003. The multi-day component of the gravity based civil penalty is determined using the multi-day matrix found at page 26 of the above document. Policy adjustments and economic benefit are as explained in the Revisions to the 1990 Penalty Policy.

CERTIFICATE OF SERVICE

I, Jean Hogan, hereby certify that I delivered a copy of the foregoing Complaint and Compliance Order, Docket No. RCRA-05- 2005 0009, to the persons designated below, on the date below, by depositing it in the U.S. Mail, certified-return receipt requested, postage prepaid, at Chicago, Illinois, in an envelope addressed to:

Mr. Alfred Sigg
Vice President & General Manager
Von Roll America, Inc.
1250 St. George Street
East Liverpool, Ohio 43920-3400

I also certify that I sent copies by first class mail to:

Harry Sarvis
Division of Hazardous Waste Management
Ohio Environmental Protection Agency
122 South Front Street
Columbus, Ohio 43215-2329

Charles Waterman III, Attorney at Law
Brickler & Eckler LLP
100 South Third Street, Suite 305
Columbus, Ohio 43215-4291

I have further filed the original of the Complaint and Compliance Order and this Certificate of Service in the Office of the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 23 day of June, 2005.

Administrative Program Assistant
Enforcement & Compliance Assurance Branch
U.S. EPA, Region 5